

ART MARINACCIO

IBLA 87-588

Decided March 2, 1989

Appeal from a decision of the California State Office, Bureau of Land Management, declaring the Relocated Yellow Rock placer mining claim null and void ab initio in part. CA MC 186932.

Affirmed.

1. Courts--Mining Claims: Lands Subject to--Segregation--Withdrawals and Reservations: Effect of--Withdrawals and Reservations: Revocation and Restoration--Classification and Multiple Use Act of 1964

Where a Federal district court issues a preliminary injunction which has the effect of suspending the termination of a multiple use classification which segregated the land from mineral entry, thereby reinstating the terms of the classification, a mining claim subsequently located on land subject to that injunction is properly declared null and void ab initio.

APPEARANCES: Art Marinaccio, Shingle Springs, California, pro se.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Art Marinaccio 1/ appeals from a June 12, 1987, California State Office, Bureau of Land Management (BLM), decision declaring null and void ab initio a portion of the Relocated Yellow Rock placer mining claim on the basis that the lands were closed to mineral entry pursuant to the injunction ordered in National Wildlife Federation v. Burford (National Wildlife), 676 F. Supp. 280 (D.D.C. 1986), aff'd, 835 F.2d 305 (D.C. Cir. 1987).

On January 21, 1987, Marinaccio and three others filed with BLM a notice of location for the claim in question indicating that it was located in the E\ NE^ of sec. 21, T. 9 N., R. 12 E., Mount Diablo Meridian,

1/ Although Marinaccio appeals as an individual, the claim lists as colocators Ken Hurtubise, Sr., Jeri Long, and Ken Hurtubise, Jr.

El Dorado County, California, on January 10, 1987. A portion of the claimed lands ^{2/} had been segregated from appropriation under the mining laws by multiple use classification notice S 572 (32 FR 20660-61 (Dec. 21, 1967)); however, effective August 20, 1984, the classification pertaining to the claimed land was terminated. 49 FR 28932-33 (July 17, 1984).

Appellant argues that a power site classification pertaining to his claim no longer existed at the time his claim was filed; the National Wildlife injunction does not apply in these circumstances; the Federal Energy Regulatory Commission (FERC) has no objection to the proposed mining; and, the land described in his claim was not closed to mining by classification notice S 572 as alleged by BLM.

[1] We conclude that BLM properly declared a portion of the claim in question null and void ab initio based on the following analysis. On July 15, 1985, the National Wildlife Federation (NWF) filed suit in the District Court for the District of Columbia challenging the Department's procedures for terminating, revoking, or modifying withdrawals or classifications of public lands. The district court granted the preliminary injunction requested by NWF in a memorandum opinion dated December 4, 1985. National Wildlife Federation v. Burford, 676 F. Supp. 271 (D.D.C. 1985). In accordance with the direction of the court, the Department had the injunction published in the Federal Register. 50 FR 51609 (Dec. 18, 1985). The court stayed its injunction on December 19, 1985. 50 FR 52565 (December 24, 1985).

Subsequently, by memorandum opinion dated February 10, 1986, the district court denied reconsideration of the injunction and modified the injunction to clarify that it only applied to Federal defendants, not third parties, and that terminations of classifications and revocations of withdrawals which had taken place since January 1, 1981, were suspended, not voided. ^{3/} National Wildlife Federation v. Burford, 676 F. Supp. 280 (D.D.C. 1986), aff'd, 835 F.2d 305 (D.C. Cir. 1987). ^{4/}

In Chester C. Reddeman, 101 IBLA 33 (1988), this Board was asked to determine the impact of the National Wildlife preliminary injunction on three lode mining claims and a mill site claim located by Reddeman. In that case BLM terminated a classification on August 21, 1981, which had segregated certain lands from mineral entry, and on October 5, 1981, opened the land to all forms of appropriation under the public land laws, including

^{2/} The classification notice pertains to the S\ NE^ NE ^ and SE^ NE^ of sec. 21, T. 9 N., R. 12 E., Mount Diablo Meridian, California. Thus, the BLM decision did not declare the entire claim null and void ab initio.

^{3/} The court's preliminary injunction is published at 51 FR 5809-5810 (Feb. 18, 1986).

^{4/} Eventually, the district court dismissed the suit based on its conclusion that the plaintiffs had no standing. It also vacated the preliminary injunction and denied NWF's motion for a permanent injunction. National Wildlife Federation v. Burford, No. 85-2238 (D.D.C. Nov. 4, 1988), appeal docketed, No. 85-5397 (D.C. Cir. Nov. 14, 1988).

locations under the mining laws. In Reddeman, we found the injunction suspended any termination of classification or revocation of withdrawal which occurred after January 1, 1981, and that it was intended to reinstate and had the effect of reinstating the terms of any such terminated classification or revoked withdrawal. Since Reddeman's claims were located in August and September 1986, months after the district court's injunction, we upheld the BLM decision declaring the claims null and void ab initio on the basis that at the time of his locations the land was not open to entry under the mining laws.

The Reddeman decision is controlling. In this case the claim was located in January 1987, nearly one year after the effective date of the court's injunction, 5/ which had the effect of restoring the classification and precluding the location of mining claims on the lands in question. 6/

Appellant is correct that a power site reservation (Power Site Reservation 416) which had covered lands embraced by the claim had been revoked at the time the claim was located. However, that fact and appellant's allegation that FERC has no objection to mining on the claim does not affect our conclusion because the National Wildlife injunction, which had the effect of reinstating the multiple-use classification, was still applicable to certain lands embraced by the mining claim at the time of location. 7/

BLM's determination that at the time of location of the Relocated Yellow Rock claim a portion of the claimed land was not open to the mining laws must be upheld. The fact that the preliminary injunction is no longer in effect does not change the outcome of this case. We have held that where the segregative effect of a proposed withdrawal is terminated after location of a mining claim, the location is not retroactively validated. Harold E. De Roux, 94 IBLA 350 (1986).

5/ In Harold Bennett, 107 IBLA 291 (1989), the Board discussed the effective date of the court's injunction and concluded that it was Feb. 18, 1986.

6/ Appellant argues that the classification in question did not segregate any lands embraced by the claim. That contention is not borne out by the record. The 1967 Federal Register notice cited above clearly describes the lands identified by BLM as only being segregated from appropriation under the mining law.

7/ The allegation that FERC has no objection to mining, even if proven, would not change the outcome of this decision, given the injunction's reinstatement of the terms of the multiple use classification. This Board has held that the segregative effect of a classification continues until it is formally revoked, modified, or terminated. This is true even though the original basis for the segregation is no longer valid and even though a future termination of the segregation is being considered. Homer Owens, 81 IBLA 402 (1984); Samuel P. Speerstra, 78 IBLA 343 (1984); Ronald Ramm, 67 IBLA 32 (1982); William C. Reiman, 54 IBLA 103 (1981).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appealed decision is affirmed.

Bruce R. Harris
Administrative Judge

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I concur:

Anita Vogt
Administrative Judge
Alternate Member